THE HONOURABLE SRI JUSTICE
GODA RAGHURAM
AND
THE HONOURABLE SRI JUSTICE
R.SUBHASH REDDY

WRIT PETITION No. 17889 of 2007

Dated: 12-12-2007

Between:

G.V.Rajkumar Reddy

…Petitioner

and

The High Court of A.P., rep. by its
Registrar (Management), Hyderabad and others

…Respondents

W.P.No.17889 of 2007

Order: (Per GR, J)

On 27-12-2006 the petitioner addressed the 1st respondent requesting transmission of his application to the 3rd respondent and issuance of a no-objection certification to enable his appointment by transfer as Junior Assistant in the Zilla Parishad, Kurnool under the Panchayat Raj and Rural Employment Department. The representation was addressed by the petitioner pursuant to a Circular of the 1st respondent dated 5-10-2001.

Initially by a Circular dated 24-2-1990 the 1st respondent directed the Unit Officers under its control to furnish the service particulars of members who seek transfer to other departments/units including information as to whether such applicants are temporary, probationers, approved probationers, or confirmed employees and whether they are holding any lien in their respective posts. The Unit Officers are also required to inform such members who seek transfer that they cannot be repatriated to their parent units unless they hold lien in their respective parent units. This circular was issued in view of the fact that numerous applications from the members of staff of the Subordinate Courts are being received for transfer to various departments of the State and the 1st respondent was flooded with numerous such requests.

Thereafter, pursuant to the judgment of a Division Bench of this Court in W.P.No. 5514 of 2001, a revised Circular dated 5-10-2001 was issued by the 1st respondent, intended to be a clarification of the earlier Circular on the issue. The Circular dated 5-10-2001 states that the Unit Heads are not prohibited from forwarding applications of employees who intend to apply to other departments, but subject to the condition that such candidates are to be specifically intimated in writing by the Unit Heads while forwarding the applications that they would have to resign from service in the Judicial Department if offered appointment in the Department to which they have applied.

On the basis of and drawing inspiration from the Circular dated 5-10-2001 the petitioner addressed the representation dated 27-12-2006 to the 1st respondent. By the order impugned, dated 31-3-2007 the 1st respondent rejected the petitioner's application. Hence the challenge.

In the counter-affidavit dated 23-10-2007 the 1st respondent states, in amplification of the brief order of rejection impugned herein that the petitioner's application was rejected as there was no possibility of departmental transfer from the Judicial Ministerial Service to the Panchayat Raj Department.

Despite considerable effort, the learned counsel for the petitioner Sri Surender Rao is unable to point out any Rule or compositional structure in the Andhra Pradesh Ministerial Service Rules, 1998 which provides for the post of a Junior Assistant in the Zilla Parishad or enables recruitment/appointment by transfer to the post of a Junior Assistant in the Zilla Parishad from any

other service in the State. Even if there be such a provision in the Ministerial Service Rules of the State that may not *per se* be a dispositive of the issue and in the context of the special constitutional position accorded to the Judicial Branch. On any issue impacting the functioning of the Judicial Branch consultation with the appropriate High Court is a *sine qua non* and the State may not issue a Service Rule which has a clear and direct impact on the functioning of the Judicial Branch without prior consultation with the High Court. It is axiomatic that the A.P. Ministerial Service Rules do not deal with the Ministerial employees of the Judicial Branch for whom there are distinct Rules, currently the Andhra Pradesh Judicial Ministerial Service Rules, 2003, made in consultation with the High Court as constitutionally ordained.

In the circumstances, even if there be a provision in the A.P. Ministerial Service Rules providing for recruitment by transfer from any other department, such an open textured provision will have to be restrictively construed as to exclude a transfer from the Judicial Ministerial Service in the context of the special disposition under the Constitution which the judicial branch enjoys.

Neither the Circular dated 24-2-1990 nor the one dated 5-10-2001 constitutes the Unit Heads as mere transmitters of applications of Ministerial employees of the judicial department who seek migration to other departments of the State. What all the circulars posit is that applications for departmental transfer may not be interdicted casually and that such applicants must be cautioned that they would have to resign from the judicial department in the event they are offered appointment in the department to which they have applied. Even in the context of this

Circular, it is open to the appropriate and competent authority to ascertain whether an application for a departmental transfer is permissible in law. If, as in the present case, there is no post of Junior Assistant in the Zilla Parishad to which the petitioner, a Junior Assistant in the judicial unit could be appointed by the method of transfer, the Unit Head or the competent authority is not obligated to mechanically forward an irrelevant application.

The learned counsel for the petitioner has not shown any legal regime by which the petitioner could be considered for appointment or recruitment by transfer to the post of a Junior Assistant in Zilla Parishad, Kurnool under the Panchayat Raj and Rural Employment Department.

For the aforesaid reasons, the order impugned suffers from no infirmity warranting interference. There are no merits. If the petitioner can identify any statutory or other mechanism which afford an opportunity for recruitment/appointment by transfer to the Zilla Parishad in a context that obligates consideration of such transfer by the judicial department of the State, he is at liberty to make a fresh application, which if made, will be considered by the 1st respondent in accordance with law.

On the above analysis, the writ petition is dismissed. There shall be no order as to costs.

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GODA RAGHURAM, J

12th December, 2007

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R.SUBHASH REDDY, J

GRR